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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

NO. 78-25

BERNADINE ROSE BROKENLEG,

Petitioner,

v.

BERNARD C. BUTTS, SR., *et ux.*,

Respondents.

MOTION FOR LEAVE TO PROCEED AMICUS CURIAE BY THE ROSEBUD SIOUX TRIBE AND MEMORANDUM IN SUPPORT OF PETITION FOR CERTIORARI

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES AND STATUTES ... ii

MOTION 1

INTEREST OF AMICUS CURIAE 2

ARGUMENT 3

I. IT IS NOT DETRIMENTAL OR DANGEROUS FOR ANY CHILD TO BE REARED ON THE ROSEBUD SIOUX INDIAN RESERVATION. 3

II. IT IS NOT DETRIMENTAL OR DANGEROUS FOR A TRIBAL MEMBER WITH SOME NON-INDIAN FEATURES TO BE RAISED ON THE ROSEBUD SIOUX INDIAN RESERVATION. 6

CONCLUSION 9

CERTIFICATE OF SERVICE 9

TABLE OF AUTHORITIES AND STATUTES

Fisher v. District County Court
97 S.Ct. 943 (1976) 2

Rosebud Sioux Tribe v. Kneip
97 S.Ct. 1361 (1976) 2

Williams v. Lee
358 U.S. 217 (1959) 4

Public Law 93-638
25 USC §450 4

Rosebud Sioux Tribal Constitution
Article II §1 and 2 7
Article IV §1 (p) and (q) 2

Rosebud Sioux Tribal Resolution 77-21 2

Senate Bill 1214
95 Cong., 1st Sess., April 21, 1977 4

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MOTION

Terry L. Pechota, attorney for amicus curiae, Rosebud Sioux Tribe, moves this Court for an Order allowing the Rosebud Sioux Tribe to file a memorandum in support of the Petition for Writ of Certiorari to the Court of Civil Appeals of the State of Texas, El Paso. The interest of amicus curiae in this proceeding is more specifically set out below.

INTEREST OF AMICUS CURIAE

The Rosebud Sioux Tribe is a federally recognized Indian Tribe having its business office on the Rosebud Indian Reservation in South Dakota. *Rosebud Sioux Tribe v. Kneip*, 97 S.Ct 1361 (1976). It is the principal governing authority over Indians residing on the Rosebud Indian Reservation. Approximately 8,000 Rosebud Sioux Indians reside on the reservation.

The governing authority of the Rosebud Sioux Tribe is the Rosebud Sioux Tribal Council. The Tribal Council has promulgated a Tribal Law and Order Code. Both the Constitution and the Law and Order Code contain provisions for the regulation of domestic relations of Rosebud Sioux tribal members. Article IV, §1(p) and (q) of the Rosebud Sioux Tribal Constitution and Rosebud Sioux Tribal Resolution 77-21 (adoptions). Child custody matters are regularly decided by the Rosebud Sioux Tribal Court. *See Fisher v. District County Court*, 96 S.Ct. 943 (1976).

As the governing authority of Rosebud Sioux tribal members residing on the reservation, the Rosebud Sioux Tribe has the ultimate concern for the welfare of Rosebud Sioux tribal members. The Tribe recognizes that membership is its most important resource. Thus the Rosebud Sioux Tribe constantly strives to keep Indian families united and afford all who desire a comfortable place to live on the Rosebud Sioux Indian Reservation.

Any finding by any court wherever situated that it is detrimental to raise a child on the Rosebud Indian Reservation or that a tribal member with certain physical features could not be raised naturally on the Rosebud Indian Reservation causes the Tribe serious concern. If such a finding is allowed to remain in existence and be perpetrated, then the deathblow has been dealt and in a short period of time the Rosebud Sioux Indian Reservation could very well cease to exist.

Amicus, Rosebud Sioux Tribe, respectfully adopts, for purposes of this memorandum, the material in the Petition under the headings "Opinions Below", "Jurisdiction", "Questions Presented", "Constitutional and Statutory Provisions Involved", and "Statement of the Case."

ARGUMENT

The Rosebud Sioux Tribe as amicus curiae adopts as its own the reasoning set forth under Sections I and III of the Petition For A Writ of Certiorari. In this memorandum, amicus will direct its argument to further elaborate on Section II of the Petition For A Writ Of Certiorari.

I.

IT IS NOT DETRIMENTAL OR DANGEROUS FOR ANY CHILD TO BE REARED ON THE ROSEBUD SIOUX INDIAN RESERVATION.

In Finding of Fact number 6, the trial court found that it would be dangerous to the physical and emo-

tional well-being of Tiffany Lynette Butts for her to be returned to the Rosebud Reservation to be raised by her mother.

There was no evidence presented in the lower court supporting the finding encompassed in Finding of Fact number 6. Yet the lower court found that the Rosebud Indian Reservation would pose a danger to Tiffany Lynette Butts if she was returned there to be raised. It is one thing to say that certain conditions relevant to a particular child are not in its best interest, which was not found either by the lower court or appellate court, and quite another to draw from the fact of a reservation the conclusion that a child cannot be raised without danger thereon. The fact of a reservation simply is not the cause of the former; the latter, with all due respect, seems to be a typical, non-Indian stereo-typed characterization of an Indian reservation.

The United States Government, which has plenary power over Indian affairs, *Williams v. Lee*, 358 U.S. 217 (1959), at the present time is affecting a policy of Indian self-determination with respect to Indian affairs. Pub.L. 93-638, §2, 88 Stat. 2203, 25 USC §450. Indian people on reservations across the country are being given responsibility for their own governance. The United States Government, instead of attempting to destroy Indian reservations, has recognized that Indian people want to keep their land and raise their children in the Indian way. *See e.g.* Senate Bill 1214, 95 Cong., 1st Sess., April 21, 1977. Quality of life on the Rosebud Indian Reservation exceeds that which exists

on areas outside of the reservation. Moreover, it is accentuated by the existence of the Rosebud Sioux culture and tradition. Sioux culture and tradition shapes the everyday living patterns and government on the Rosebud Indian Reservation.

To say that the Rosebud Indian Reservation is dangerous to the welfare of Tiffany Lynette Butts is belied by the state of affairs on the Rosebud Indian Reservation. A well equipped, well trained, and well manned police department administered by the United States through its Bureau of Indian Affairs keeps the law and order on the Rosebud Indian Reservation. A child protection team constantly monitors the welfare of all children on the Rosebud Indian Reservation. New housing units are in the process of being built to meet the housing needs of all Rosebud Sioux Tribal members. A Public Health Service Hospital attends to the medical needs of those tribal members unable to afford private treatment. Legal services are available to those unable to retain private counsel. Other services available to reservation residents, such as the following, further provide to a quality life for reservation residents: Alcoholism Treatment Program, Ambulance Service, Community Action Program, Comprehensive Employment and Training Program, Sinte Gleska Community College, Comprehensive Health Representative Program, Day Care Center, Delta Marie Home for Disadvantaged Children, Economic Development Program, Follow Through Program, Public Schools, Food Service Program, Head Start Program, Home

Improvement Program, Mortuary Service, and National Indian Highway Safety Program. All tribal members are entitled to the services of the Bureau of Indian Affairs, which provides a plethora of human services. The economic and social climate on the Rosebud Sioux Indian Reservation lends itself to providing a high quality of life for any child.

It is significant to point out, in addition to all of the above, that a psychiatrist testified in the lower court that life on an Indian Reservation is sophisticated and rich in values important to children, TT. 105, and that to not return Tiffany to her mother, her culture, and her people would be deleterious to her future growth and development. TT. 103.

The Rosebud Sioux Tribe submits to the Court that there simply is no basis in fact for any court to make the determination that Tiffany Lynette Butts or any child would be endangered in any way if raised on the Rosebud Sioux Indian Reservation.

II.

IT IS NOT DETRIMENTAL AND DANGEROUS FOR A TRIBAL MEMBER WITH SOME NON-INDIAN FEATURES TO BE RAISED ON THE ROSEBUD SIOUX INDIAN RESERVATION.

The lower court found in Finding of Fact number 7 that Tiffany Lynette Butts possessed some non-Indian features and hence to require her to be raised on the Rosebud Indian Reservation would be unnatural, deleterious, and dangerous.

Finding of Fact number 7, other than the trial

court's observation of the child, has no basis in fact, either in the record or otherwise. To the extent that the trial court did observe that Tiffany Lynette Butts did possess non-Indian features, such determination is subjective. Whether one possesses non-Indian features above all is relative. More importantly, the conclusion drawn by the trial court from its observation reflects a highly uninformed attitude about life and the state of affairs on an Indian reservation.

The Rosebud Sioux Nation, which occupies the Rosebud Indian Reservation, is comprised of in excess of 8,000 enrolled members. Article II, Section 1 and 2 of the Rosebud Sioux Tribal Constitution sets forth the requirements for enrollment in the Rosebud Sioux Tribe:

Section 1: Membership of the Rosebud Sioux Tribe shall consist as follows:

(a) All persons of Indian blood, including persons born since December 31, 1920, whose names appear on the official census roll of the tribe as of April 1, 1935.

(b) All persons born after April 1, 1935, and prior to the effective date of this amendment, to any member of the Rosebud Sioux Tribe who was a resident of the reservation at the time of the birth of said persons.

(c) All children of one-fourth or more Rosebud Sioux Indian blood born after the effective date of this amendment to a member of the tribe, regardless of the residence of the parent.

Section 2: The Tribal Council shall have power to promulgate ordinances, subject to review by the Secretary of the Interior, covering future membership and the adoption of new members.

As can be seen from the above, one does not have to be a full blood Indian to be enrolled. There are substantial numbers of persons enrolled who are of 1/16 and 1/32 degree Indian blood. Many enrolled members do not possess stereotyped Indian features. Nevertheless, each person enrolled is recognized as a Rosebud Sioux by the Federal Government, Rosebud Sioux Tribe, and the Indian people that he lives among. Rosebud Sioux persons of 1/16 blood live side by side with those persons who are full blooded. It is not the degree of Indian blood or Indian features that determine whether an Indian is accepted as an Indian by reservation residents but rather whether the person considers himself to be an Indian. Moreover, approximately 40% of the population of the Rosebud Sioux Indian Reservation is comprised of non-Indians. It is plainly inaccurate to say that because an Indian has blue eyes or light hair or complexion that he cannot become accepted as an Indian person on the Rosebud Indian Reservation or that it would be unnatural for the person to be raised thereon.

CONCLUSION

The Court of Appeals found no evidence to support any of the other District Court findings. Thus, the decision to appoint Respondents as managing conservators

of Tiffany Lynette Butts was based entirely on Findings of Fact numbers 6 and 7. Those Findings by the District Court have no basis in fact and above all are erroneous. Tiffany Lynette Butts should be returned to her mother to be raised on the Rosebud Indian Reservation and hence the Petition For Certiorari should be granted to correct the manifest injustice and affront to the Rosebud Sioux Tribe and its people which is encompassed by the decision of the District Court and Court of Appeals.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Terry L. Pechota, Attorney for the Rosebud Sioux Tribe, certifies that on the 22nd day of September, 1978, he mailed a true and correct copy of Amicus Curiae's Motion And Memorandum to John Lee, Attorney for Petitioners, Box 766, Kermit, Texas 79745, Michael Fostel, Box 1015, Kermit, Texas 79745, and to Bertram Hirsch, Attorney for Respondent, 432 Park Avenue South, New York City, New York 10016.

Terry L. Pechota